IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6136 of 1995

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAYAD ANWAR IBRAHIM

Versus

G S R T C

Appearance:

1. Special Civil Application No. 6136 of 1995

MR NV ANJARIA for Petitioner No. 1

MR HS MUNSHAW for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 10/12/2004

ORAL JUDGEMENT

1. This petition under Article 226 of the Constitution of India is filed by the petitioner to seek

compassionate appointment on the ground that the father of the petitioner, who was in service of the respondent-Corporation as a Head Turner Mechanic for a period of about 30 years, died in harness on 29th March 1979. At the time of death of the father of the petitioner, the petitioner was 15 years old and, being a minor, he could not make an application for compassionate appointment at that point of time. According to the petitioner, at the time of death of his father, under the prevalent Rules and Standing Orders of the Corporation, and particularly General Standing Order No.659 of 1979, which was brought into force from 12th February 1979, it was provided that a dependent of the deceased employee, who was a minor at the time of employee's death, can apply for compassionate appointment within one year of his or her attaining major. According to the petitioner, General Standing Order No. 678 of 1980 issued by the Administration Department of the Corporation, provided certain modifications in the criteria laid down in the earlier General Standing Order No.659 of 1979 and it was decided that a dependent, who was minor, would be eligible to compassionate appointment if such dependent attains 18 years within five years from the date of death of the employee. Therefore, according to the petitioner, in view of the aforesaid General Standing Orders prevalent at the relevant point of time, he was eligible to be offered appointment on compassionate ground in view of the fact that he fulfils the requisite qualification for the job. Therefore, on attaining the age of major, the petitioner had applied in the year 1993, i.e, within one year, as per the provisions of the General Standing Order, to the respondent-Corporation, for considering his case for compassionate appointment.

2. In response to the application and subsequent representations made by the petitioner narrating the hardships caused to the family members of the petitioner, no positive reply was received by the petitioner from the respondents and, therefore, the petitioner filed the present writ petition under Article 226 of the Constitution of India with a prayer to direct the respondents-Authorities to consider his case for compassionate appointment.

3. The respondents filed affidavit-in-reply contending, inter alia, that the petitioner is not eligible for compassionate appointment in accordance with the Rules and Regulations framed by the respondent-Corporation. It is submitted that, even at the relevant point of time, one of the dependents of the deceased employee and the brother of the present

petitioner, Azia Ibrahim Bayad, had applied for a job on compassionate ground and, on enquiry, it was found that, the elder son of the deceased employee, namely, Mohmad Ibrahim Bayad, was serving in All India Radio Station as a driver and earning Rs.400 per month, while the second son of the deceased employee, namely, Badal, was working with the Gujarat State Road Transport Corporation itself in Bhuj Division in the cadre of Helper and earning Rs.300/- per month in those days. Accordingly, the petitioner, who is seeking the job on compassionate ground at present, and his another brother, Azia Ibrahim Bayad, who had earlier applied for compassionate appointment at the relevant time, were staying with the elder brother Mohmad Ibrahim Bayad along with other family members as well as mother and grand-mother in a joint family.

4. Relying on this finding of fact, the respondents have submitted that the petitioner did not fall in the criteria laid down by the General Standing Order No.659 of 1979 and, therefore, he is not eligible to be considered for compassionate appointment. Even the General Standing Orders, on which the petitioner has relied, came into force with effect from 6th April 1979 and the same was not applicable to the case of the petitioner, in view of the fact that the death of the father of the petitioner took place on 29th March 1979. Accordingly, it was decided by the respondents that the petitioner was not eligible to the compassionate appointment.

5. Having heard the learned advocates for the parties, it is borne out from the documents produced along with the petition as well as the affidavit-in-reply, and, particularly, the findings of fact arrived at by the respondent-Corporation with regard to income of the family members of the petitioner, the decision taken by the respondent-Corporation cannot be said to be arbitrary, unreasonable, discriminatory or violative of Article 14 of the Constitution of India and, therefore, no power can be exercised by this Court in its extraordinary jurisdiction under Article 226 of the Constitution of India.

6. The purpose of considering the case of the dependent of the deceased employee is to provide minimum succor to the members of the deceased family so that an appropriate care can be taken. In the present case, even on facts also, two brothers of the petitioner are already serving in the government establishment or semi-government corporation, and, therefore also, the

case of the petitioner is not covered by the General Standing Orders, as stated in the affidavit-in-reply. Even the case of the petitioner, as per the General Standing Order dated 15th February 1980, is also not well founded, since the said Standing Order has come into effect after 15th February 1980, i.e. after the death of the father of the petitioner.

7. Accordingly, it cannot be said that the decision of the respondent-Corporation not to consider the case of the petitioner for compassionate appointment is, in any manner, unjustified or illegal or contrary to the Rules and Regulations framed by the Corporation for grant of compassionate appointment.

8. In the result, this petition has no substance and it is rejected. Rule is discharged with no order as to costs.

(Anant S. Dave, J.)
(swamy)